

NA 05-0165-C H/H Martin v Barnhart
Judge David F. Hamilton

Signed on 01/04/07

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

STEVE J. MARTIN, SR.,)	
)	
Plaintiff,)	
vs.)	NO. 4:05-cv-00165-DFH-WGH
)	
JO ANNE B.)	
BARNHART, COMMISSIONER OF THE)	
SOCIAL SECURITY ADMINISTRATION,)	
)	
Defendant.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

STEVE MARTIN,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 4:05-cv-0165-DFH-WGH
)	
JO ANNE B. BARNHART,)	
Commissioner of Social Security,)	
)	
Defendant.)	

ENTRY ON JUDICIAL REVIEW

Plaintiff Steve Martin seeks judicial review of a decision by the Commissioner of Social Security denying his claim for disability insurance benefits under the Social Security Act. Acting for the Commissioner, an Administrative Law Judge (“ALJ”) determined that Mr. Martin had a variety of impairments, including aseptic necrosis that required bilateral hip replacement surgery, the residuals of left leg fractures, degenerative joint disease of the left knee, chronic pain syndrome and a history of alcohol abuse. The ALJ concluded, however, that Mr. Martin was not disabled for purposes of the Social Security Act because he was still capable of performing a restricted range of sedentary work. As explained below, the court affirms the ALJ’s denial of benefits.

Background

Mr. Martin was born in 1956. He completed the eighth grade. He has past work experience as an inspector in a wood factory and an operator in a tool and

dye shop. He alleges that he became disabled on October 28, 1997 due to pain and numbness in the legs and hips resulting from hip replacement of both hips and the left leg being broken three times. R. 342. Mr. Martin has not engaged in substantial gainful activity since October 28, 1997. *Id.*

In October 1997, Mr. Martin was diagnosed with aseptic necrosis in both hips. He underwent left hip replacement in April 1998, R. 232, and right hip replacement in October 1998. R. 250-51. Mr. Martin began physical therapy. R. 187-88. In March 1999, he was “ambulating well” with a slight lurch and minimal pain. R. 210. William Sligar, M.D., Mr. Martin’s orthopedic surgeon, noted that Mr. Martin walked with a minor lurch but was “actually getting along quite well with good motion about both hips and good motion about his spine,” that he had “essentially normal” X-rays of the spine and hips, and that he was neurologically intact. R. 220. Dr. Sligar allowed Mr. Martin to perform normal activities and to continue an exercise program on his own. R. 221. In December 1999, Dr. Sligar noted that Mr. Martin had no specific complaints and that further treatment was not necessary. R. 218.

In April 2000, Mr. Martin complained about increased pain in his legs. R. 261. Dr. Sligar prescribed epidural blocks and Flexeril, a muscle relaxant, to reduce spasms. *Id.* In June 2000, Dr. Sligar noted that the epidural blocks had provided relief and that Mr. Martin complained of only some achiness in his back. Dr. Sligar indicated that he had no further treatment for Mr. Martin and that the

patient's current symptoms were not severe enough to warrant physical therapy. Dr. Sligar continued Mr. Martin's Flexeril prescription, allowed him to engage in any activity he could tolerate, and instructed him to continue home exercises. R. 259.

Mr. Martin did not see Dr. Sligar until November 2001, when he reported increased pain in his left hip. R. 391. Mr. Martin reported that he could walk only a block and that he did light work around the house. *Id.* Dr. Sligar noted that Mr. Martin walked with a mild limp without a cane or walker. *Id.* Dr. Sligar ordered X-rays of both hips, which showed good positioning of prosthetic components with no evidence of loosening. R. 388. An MRI scan of Mr. Martin's lower back was "basically normal" with only minor bulging at L4-5. *Id.* Dr. Sligar did not consider these findings severe enough to warrant any sort of further intervention, and he suggested an anti-inflammatory medication for pain relief. *Id.*

In June 2002, Mr. Martin complained of pain in his left knee. R. 387. Dr. Sligar noted that the knee was tender but without swelling, effusion, or instability. *Id.* X-rays revealed some degenerative changes but no evidence of acute problem. *Id.*

In December 2002, Mr. Martin complained of lower back pain. R. 386. Dr. Sligar ordered an MRI scan that showed well-preserved disc heights and signal,

with no evidence of significant bulging or herniation. R. 383. X-rays of the lower back showed only mild degenerative changes. R. 385. X-rays of the hips indicated that they were stable and showed no signs of loosening in the prosthetic components. R. 384. Dr. Sligar noted that Mr. Martin's MRI scan was "remarkably normal" and that the X-rays failed to show any abnormality severe enough to warrant intervention. R. 382. He suggested continued treatment with Vioxx (an anti-inflammatory medicine that was later withdrawn from the market). *Id.*

In February 2003, C. M. Hocker, M.D., Mr. Martin's primary care physician, wrote that Mr. Martin complained of persistent leg pain, for which he could find no specific cause. R. 436. After summarizing Mr. Martin's medical status, Dr. Hocker opined: "I cannot see any reason why he would not be able to perform some type of gainful employment at this time." *Id.*

In March 2003, Mr. Martin was examined Mehmet Akaydin, M.D., a state agency medical consultant. R. 405-09. Mr. Martin reported that he felt "okay I guess, maybe just a little sore in the legs." R. 405. Dr. Akaydin observed normal muscle tone, normal sensation and reflexes, a generally normal gait, limitation in the ability to squat, toe, heel, or tandem walk, and normal range of motion in all joints except for the spine and knees. R. 406-08. Dr. Akaydin concluded that Mr. Martin would benefit from vocational rehabilitation, and that he could perform

work that was relatively sedentary or “sit-down,” in contrast to his past work that was physically strenuous. R. 409.

At that time, Mr. Martin also had a psychological examination by Daniel Miller, Ph.D., a state consultative psychologist. R. 393-404. Mr. Martin reported that he felt depressed “off and on.” R. 395. He estimated his depression at three or four on a scale of one to ten, with ten being severe. *Id.* He also reported being nervous around crowds of people. R. 396. Dr. Miller concluded that Mr. Martin had depression and social anxiety, and assigned a Global Assessment of Functioning (GAF) score of 65-70, indicating some mild symptoms (depressed mood, insomnia), or some difficulty in social, occupational, or school functioning, with an overall ability to function quite well. R. 404, referring to American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 34 (4th ed., 2000). A psychiatric review performed at that time by J. Gange, Ph.D., a state medical reviewer, concluded that Mr. Martin’s mental limitations did not constitute a severe impairment. R. 411. Dr. Gange noted that Mr. Martin’s GAF score indicated few limitations in adaptive functioning and that he appeared capable of performing simple tasks. R. 423.

In May 2003, S. Roush, M.D., a state agency medical consultant, performed an assessment of Mr. Martin’s physical capacity. R. 425-32. Dr. Roush found that Mr. Martin could occasionally lift ten pounds, frequently lift less than ten pounds, stand or walk for two hours, and sit for six hours in an eight-hour

workday. R. 426. He found that Mr. Martin was restricted to postural limitations that allowed only occasional stooping, kneeling, crawling and crouching, but excluded operation of leg controls, climbing of ramps, stairs, ladders, ropes, and scaffolds. R. 426-27.

In September 2003, Dr. Akaydin performed a second consultative examination and his findings were not significantly different from his prior examination. R. 444-49. Dr. Akaydin opined that Mr. Martin could not return to his former “stand-up” type of work, but that with training he would be able to do less strenuous work. R. 448. The doctor concluded that Mr. Martin should avoid employment requiring more than minimal ambulation, standing, or stair climbing, and that he was best suited for “primarily sedentary” work. *Id.*

In February 2004, Dr. Sligar provided an evaluation of Mr. Martin’s functional capacity. R. 450-53. He indicated that Mr. Martin could not sit, stand, or walk for more than one hour, and that he could not lift more than four pounds. R. 450. The remainder of Dr. Sligar’s findings expressed an opinion that Mr. Martin was unable to meet the functional requirements of full-time sedentary work. R. 450-53.

Mr. Martin filed applications for disability insurance benefits and supplemental security income payments on June 23, 1998 and June 8, 1998, respectively, alleging disability commencing on October 28, 1997. Based on those

applications, an ALJ awarded Mr. Martin a closed period of disability from October 28, 1997 to December 2, 1999. R. 297. By December 2, 1999, Mr. Martin's residual functional capacity had improved. The ALJ concluded that Mr. Martin's disability ceased on that date. R. 301.

On December 11, 2002, Mr. Martin applied for disability benefits again. His application was denied initially and upon reconsideration, and Mr. Martin requested a hearing before an ALJ. The Appeals Council denied Mr. Martin's request for review. Mr. Martin now seeks this court's review.

Testimony at the Hearing

At the July 9, 2004 hearing, Mr. Martin testified that he had remained disabled and had not worked since October 28, 1997 because of ongoing pain in both of his legs. R. 483, 493. He saw Dr. Sligar about twice a year and his family doctor about once a year. R. 482. Mr. Martin said his legs "go numb" and he had muscle spasms after standing for 35 to 40 minutes. R. 494. His buttocks "go numb" after he sat for one half-hour. R. 495. Most of the time, his pain was six on a scale of one to ten, with ten being the most severe. R. 491. Mr. Martin said that bending would cause his hips to "pop out." R. 494. He testified that he could carry less than a gallon of milk. R. 495. He had to lie down a couple of hours during a day due to his leg pain. R. 496.

Mr. Martin had developed back pain for which he had received injections. R. 502. He sometimes used a cane. R. 497. He did not use the cane for walking short distances unless he had a “bad day.” R. 497. He remarked that he still walked with a limp. R. 500. Mr. Martin acknowledged that he drank “once in a blue moon” due to stress and he claimed that he had not abused alcohol for ten years. R. 497-98. He stated that he had not been seeing a psychiatrist or taking any medication for a mental health problem. R. 498.

His wife drove him to the hearing, but he had a driver’s license and drove on average a couple of times a week. R. 483. At home, he put together a model car and played games with his hands occasionally. R. 497.

The medical witness, Dr. Albert Goldin, testified that Mr. Martin had a condition known as A-vascular necrosis of the femoral heads for which he had had bi-lateral hip replacement surgery. R. 463. Dr. Goldin stated that Mr. Martin did not have any impairment, either singly or in combination that would meet or equal one of the listed impairments in Appendix 1, Subpart P, Regulation No. 4. R. 464. Dr. Goldin opined that Mr. Martin’s medical condition would cause him to have “some limitation of prolonged standing or walking,” *id.*, and difficulty performing more than sedentary work. R. 465. However, Dr. Goldin opined that Mr. Martin’s complaints about the pain were not consistent with the medical records because the X-rays did not “show a severe deformity or disorganization of the bony structures.” R. 466. Dr. Goldin disagreed with the limitations on Mr. Martin’s

ability to work that Dr. Sligar had identified in the February 2004 assessment. R. 478.

The vocational expert, Sharon Lane, testified that Mr. Martin's former jobs as a setup operator and patcher inspector would be classified as medium to heavy in physical demands and that his medical condition would preclude him from doing his past work. R. 504. Given the limitations described to him by ALJ Kimberlin, the vocational expert testified that Mr. Martin could work as a weigher (58,000 jobs in the national economy, 1,969 in Indiana, and 720 in the local area where Mr. Martin resided), polisher (45,000 jobs in the national economy, 1,246 in Indiana, and 527 in the local area), and sorter (47,000 jobs in the national economy, 2,116 in Indiana, and 673 in the local area). R. 507.

Procedural History

The ALJ concluded that Mr. Martin was not disabled after December 2, 1999. The Appeals Council denied Mr. Martin's request for review, leaving the ALJ's decision as the final decision of the Commissioner of Social Security. See *Smith v. Apfel*, 231 F.3d 433, 437 (7th Cir. 2000); *Luna v. Shalala*, 22 F.3d 687, 689 (7th Cir. 1994). Pursuant to 42 U.S.C. § 405(g), Mr. Martin now seeks this court's review of the denial of his application.

The Statutory Framework for Determining Disability

To be eligible for disability insurance benefits, a claimant must establish that he suffers from a disability within the meaning of the Social Security Act. To prove disability under the Act, the claimant must show that he is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that could be expected to result in death or that has lasted or could be expected to last for a continuous period of not less than 12 months. 42 U.S.C. § 423(d). Mr. Martin was disabled after December 2, 1999 only if his impairments were of such severity that he was unable to perform work that he had previously done and if, based on his age, education, and work experience, he also could not engage in any other kind of substantial work existing in the national economy, regardless of whether such work was actually available to him. *Id.*

This standard is a stringent one. The Act does not contemplate degrees of disability or allow for an award based on partial disability. *Stephens v. Heckler*, 766 F.2d 284, 285 (7th Cir. 1985). Even claimants with substantial impairments are not necessarily entitled to benefits, which are paid for by taxes, including taxes paid by those who work despite serious physical or mental impairments and for whom working is difficult and painful.

The implementing regulations for the Act provide the familiar five-step process to evaluate disability. The steps are:

- (1) Has the claimant engaged in substantial gainful activity? If so, he was not disabled.
- (2) If not, did the claimant have an impairment or combination of impairments that are severe? If not, he was not disabled.
- (3) If so, did the impairment(s) meet or equal a listed impairment in the appendix to the regulations? If so, the claimant was disabled.
- (4) If not, could the claimant do his past relevant work? If so, he was not disabled.
- (5) If not, could the claimant perform other work given his residual functional capacity, age, education, and experience? If so, then he was not disabled. If not, he was disabled.

See generally 20 C.F.R. § 404.1520. When applying this test, the burden of proof is on the claimant for the first four steps and on the Commissioner for the fifth step. *Young v. Barnhart*, 362 F.3d 995, 1000 (7th Cir. 2004).

Applying the five-step process, the ALJ found that Mr. Martin satisfied step one because he had not engaged in substantial gainful activity since his alleged onset date of disability. At step two, the ALJ found that Mr. Martin suffered severe aseptic necrosis requiring bilateral hip replacement surgery, the residuals of left leg fractures, degenerative joint disease of the left knee, chronic pain syndrome, high blood pressure, social anxiety, depression and a history of alcohol abuse. At step three, the ALJ found that Mr. Martin failed to demonstrate that any of his severe impairments met or equaled any listed impairment. The ALJ also noted that Mr. Martin's "allegations regarding his limitations are not totally credible." R. 30. At step four, the ALJ found that Mr. Martin was not able to perform any of his past relevant work. The ALJ then considered Mr. Martin's

residual functional capacity at step five and found that, despite his severe impairments, he retained the residual functional capacity to perform a significant range of sedentary work, including work as a weigher, sorter, and polisher.

Standard of Review

“The standard of review in disability cases limits . . . the district court to determining whether the final decision of the [Commissioner] is both supported by substantial evidence and based on the proper legal criteria.” *Briscoe v. Barnhart*, 425 F.3d 345, 351 (7th Cir. 2005), quoting *Scheck v. Barnhart*, 357 F.3d 697, 699 (7th Cir. 2004). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Diaz v. Chater*, 55 F.3d 300, 305 (7th Cir. 1995), quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971). To determine whether substantial evidence exists, the court must “conduct a critical review of the evidence,’ considering both the evidence that supports, as well as the evidence that detracts from, the Commissioner’s decision” *Briscoe*, 425 F.3d at 351, quoting *Lopez v. Barnhart*, 336 F.3d 535, 539 (7th Cir. 2003); see also *Zurawski v. Halter*, 245 F.3d 881, 888 (7th Cir. 2001). The court must not attempt to substitute its judgment for the ALJ’s judgment by reweighing the evidence, resolving material conflicts, or reconsidering facts or the credibility of witnesses. *Cannon v. Apfel*, 213 F.3d 970, 974 (7th Cir. 2000); *Luna v. Shalala*, 22 F.3d 687, 689 (7th Cir. 1994). Where conflicting evidence allows reasonable minds to differ as to whether a claimant is entitled to

benefits, the court must defer to the Commissioner's resolution of that conflict. *Binion v. Chater*, 108 F.3d 780, 782 (7th Cir. 1997).

A reversal and remand may be required, however, if the ALJ committed an error of law, *Nelson v. Apfel*, 131 F.3d 1228, 1234 (7th Cir. 1997), or based his decision on serious factual mistakes or omissions. *Sarchet v. Chater*, 78 F.3d 305, 309 (7th Cir. 1996). This determination by the court requires that the ALJ's decision adequately discuss the relevant issues: "In addition to relying on substantial evidence, the ALJ must also explain her analysis of the evidence with enough detail and clarity to permit meaningful appellate review." *Briscoe*, 425 F.3d at 351, citing *Herron v. Shalala*, 19 F.3d 329, 333-34 (7th Cir. 1994). Although the ALJ need not provide a complete written evaluation of every piece of testimony and evidence, *Schmidt v. Barnhart*, 395 F.3d 737, 744 (7th Cir. 2005), a remand may be required if the ALJ has failed to "build a logical bridge from the evidence to her conclusion." *Steele v. Barnhart*, 290 F.3d 936, 941 (7th Cir. 2002).

Discussion

Mr. Martin makes three arguments. First, he contends that the ALJ improperly used the Medical-Vocational rules as a framework at step five to find him not disabled. Second, he argues that the ALJ should have given controlling weight to the opinion of Dr. Sligar, Mr. Martin's treating orthopedic surgeon. Third, he argues that the ALJ failed to evaluate adequately Mr. Martin's credibility

and failed to explain adequately why he discounted Mr. Martin's testimony about his limitations and pain.

I. *Use of the Medical-Vocational Rules*

Mr. Martin argues that the ALJ misapplied the Medical-Vocational guidelines (also known as "the grids") by relying on them after finding that the claimant was capable of less than the full range of sedentary work.

Mr. Martin is correct in stating that Medical Vocational guidelines require the ALJ to evaluate the claimant's condition on an individual basis. Section 201.00(h)(4) states that "finding that an individual is limited to less than the full range of sedentary work will be based on careful consideration of the evidence of the individual's medical impairment(s) and the limitations and restrictions attributable to it." However, Section 201.00(h)(3) adds:

the inability to perform a full range of sedentary work does not necessarily equate with a finding of 'disabled.' . . . It requires an individualized determination that considers the impact of the limitations or restrictions on the number of sedentary, unskilled occupations or the total number of jobs to which the individual may be able to adjust, considering his or her age, education, and work experience, including any transferable skills or education providing for direct entry into skilled work.

In this case, the ALJ has done exactly that – he has evaluated Mr. Martin's residual functional capacity on an individual basis and considered the impact of the limitations on the sedentary work that Mr. Martin's condition places. The ALJ did not simply apply the Medical-Vocational rule to find Mr. Martin not disabled.

The ALJ used the rule as a framework for an individualized decision based on the testimony of the vocational expert, the medical examiner, and Mr. Martin's medical history and testimony during the hearing. This evidence, together with the fact that the guidelines specifically allow a finding of not disabled when the person is unable to perform a full range of sedentary work, supports the ALJ's conclusion that Mr. Martin was not disabled.

In particular, the ALJ used the testimony of the vocational expert to make the individualized determination, which is sufficient for these purposes. *Haynes v. Barnhart*, 416 F.3d 621, 630 (7th Cir. 2005), quoting *Fast v. Barnhart*, 397 F.3d 468, 472 (7th Cir. 2005) (applying "the common-sense rule that where the grids do not address a particular problem, the ALJ is entitled to rely on the expert testimony of a vocational expert."). Here, the ALJ supplied the vocational expert with a detailed hypothetical question that included all Mr. Martin's functional limitations. R. 504-07. In response, the vocational expert testified that Mr. Martin retained the ability to perform a significant number of jobs even after taking into account the erosion in the job base caused by the limitations: weigher (58,000 jobs in the national economy, 1,969 in Indiana, and 720 in the local area where Mr. Martin resided), polisher (45,000 jobs in the national economy, 1,246 in Indiana, and 527 in the local area), and sorter (47,000 jobs in the national economy, 2,116 in Indiana, and 673 in the local area). R. 507. The ALJ properly used the vocational expert's testimony to take into account any job erosion caused by Mr. Martin's functional limitations. Substantial evidence

supports the ALJ's findings at step five that Mr. Martin could still perform a significant number of jobs and consequently was not disabled.

II. *Dr. Sligar's Assessment*

Mr. Martin argues that the ALJ improperly discounted the opinion of his treating orthopedic surgeon. Dr. Sligar completed a form on February 26, 2004 indicating that Mr. Martin was not capable of full-time sedentary work. R. 450-53. At the hearing, Dr. Goldin agreed that objective records such as X-rays do not always reveal all the symptoms, especially, the level of pain and that a treating physician would have more insight into a patient's condition. R. 479. However, Dr. Goldin was confident in disagreeing with Dr. Sligar's assessment based on his review of Mr. Martin's medical record and Dr. Goldin's own experience practicing medicine. R. 478.

The regulation, 20 C.F.R. § 404.1527(d)(2), states:

Generally, we give more weight to opinions from your treating sources . . . [i]f we find that a treating source's opinion on the issue(s) of the nature and severity of your impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in your case record.

In this case, the ALJ gave little weight to Dr. Sligar's assessment because it was unsupported by objective findings in Mr. Martin's medical records. "A treating physician's opinion is entitled to controlling weight only if it is not inconsistent with other substantial evidence in the record." *Johansen v. Barnhart*,

314 F.3d 283, 287 (7th Cir. 2002). “An ALJ need not give controlling weight to a treating physician’s opinion if it is not supported by objective clinical findings.” *Henderson v. Apfel*, 179 F.3d 507, 514 (7th Cir. 1999).

Dr. Sligar’s assessment on February 2004 was inconsistent with his own previous findings. In March and December of 1999, he had concluded that Mr. Martin walked well and had essentially normal X-rays of the spine and hips, could return to normal activities and an exercise program of his own choosing, and no longer needed treatment. R. 218, 220-21. In June 2000, Dr. Sligar had indicated that Mr. Martin’s symptoms were not severe enough to warrant physical therapy, and he had encouraged Mr. Martin to exercise and to engage in any activity he could tolerate. R. 259. In November 2001 and June 2002, Dr. Sligar again had determined that Mr. Martin’s symptoms were not severe enough to warrant any sort of intervention, and he had characterized Mr. Martin’s June 2002 lumbar MRI scans as “remarkably normal.” R. 382, 388. Hip and knee X-rays from November 2001, June 2002, and December 2002 also had failed to reveal any significant abnormalities. R. 384, 385, 387, 388. There were no additional records of examination by Dr. Sligar between December 2002 and February 2004 that would support Dr. Sligar’s assessment that Mr. Martin could not sit or stand for more than one hour, or lift more than four pounds. R. 450. The ALJ therefore was justified in giving Dr. Sligar’s February 2004 assessment little weight due to the extreme nature of the limitations that were not supported by any of Dr. Sligar’s own previous findings.

Dr. Sligar's February 2004 opinion is inconsistent with all the other medical sources in the record. In February 2003, Mr. Martin's primary care physician opined that he could not "see any reason why [Mr. Martin] would not be able to perform some type of gainful employment at this time." R. 436. The state medical consultant examined Mr. Martin in March and September 2003, and concluded that Mr. Martin could perform work if it was "primarily sedentary" or "sit-down." R. 409. Another state medical consultant reviewed Mr. Martin's medical records on March 2003 and found that he could perform a limited range of sedentary work. R. 426-27. Dr. Goldin testified at the hearing that Mr. Martin's medical limitations allowed him to perform a limited range of sedentary work. R. 464-65. Dr. Goldin specifically disagreed with Dr. Sligar's February 2004 assessment and offered a reasoned basis for that conclusion. R. 477-78. The ALJ's assessment of Mr. Martin's residual functional capability was consistent with uniformly expressed opinions of every medical source, except Dr. Sligar's February 2004 evaluation. The ALJ did not err by giving Dr. Sligar's opinion little weight.

III. *Mr. Martin's Claims of Pain*

Mr. Martin argues that the ALJ failed to evaluate adequately Mr. Martin's credibility and failed to explain adequately why he discounted Mr. Martin's testimony about his limitations and pain.

The ALJ was required to evaluate Mr. Martin's subjective complaints in light of the objective medical evidence and other evidence in the record. Social Security Ruling 96-4p states:

Once the existence of a medically determinable physical or mental impairment(s) that could reasonably be expected to produce pain or other symptoms alleged has been established on the basis of the medical signs and laboratory findings, allegations about the intensity and persistence of the symptoms must be considered with the objective abnormalities, and all other evidence in the case record.

The ALJ should also consider (1) the claimant's daily activity; (2) the duration, frequency, and intensity of pain; (3) the precipitating and aggravating factors; (4) dosage, effectiveness and side effects of medication; and (5) functional restrictions. *Scheck v. Barnhart*, 357 F.3d 697, 703 (7th Cir. 2004).

Objective medical evidence in the record does not support Mr. Martin's claims of the extreme limitations in his lifestyle. Mr. Martin testified that he could not sit for more than 30 minutes and could not stand for more than 35 to 40 minutes, that his pain was usually a six on a scale of one to ten, and that he needed to lie down a couple of hours a day. R. 492, 494-96. Mr. Martin's claims of disabling pain were contradicted by the opinions of Drs. Hocker, Akaydin, Goldin, and Roush, who all opined that Mr. Martin's physical limitations would not prevent him from working in a "sedentary" or "sit-down" type of job. R. 409, 426-27, 436, 448, 465-66. "The discrepancy between the degree of pain attested to by the witness and that suggested by the medical evidence is probative that the witness may be exaggerating her condition." *Powers v. Apfel*, 207 F.3d 431, 435-

36 (7th Cir. 2000). The ALJ was entitled to consider this inconsistency in determining Mr. Martin's credibility.

Mr. Martin's claim of disabling pain was also contradicted by the fact that he was generally prescribed only anti-inflammatory medication and muscle relaxants. R. 486-87. See *Powers*, 207 F.3d at 435 ("The ALJ found her complaints of severe pain to be inconsistent with the medical testimony and the absence of drugs prescribed for severe pain.")

The ALJ gave credit to Mr. Martin's complaints that were consistent with a limited range of sedentary work. Mr. Martin's testimony regarding the need to lie down during a day due to his leg pain was the primary vocational obstacle considered by the vocational expert and by the ALJ in determining whether Mr. Martin would be able to work. R. 505, 507.

The ALJ's credibility determination of Mr. Martin's claims was consistent with the objective medical evidence and the opinions of every medical source in the record except one. The courts have repeatedly stated that "an ALJ's credibility determination will not be disturbed unless it is patently wrong." *Diaz*, 55 F.3d at 308; also *Luna*, 22 F.3d at 690. Here, the ALJ's credibility determination was not "patently wrong" and should stand.

Conclusion

For the foregoing reasons, the ALJ's decision denying benefits is supported by substantial evidence and does not reflect a legal error that would require remand. Accordingly, the ALJ's decision is affirmed. Final judgment will be entered accordingly.

So ordered.

Date: January 5, 2007

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

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